

## II. REMARKS

Claims 23, 24, 28, 30-37 and 40-43 are pending in the subject application and stand rejected under 35 U.S.C. § 102(e). By this amendment and response, new claim 44 has been added in a sincere effort to place the application in condition for allowance. Support for the addition of new claim 44 is found in the specification on page 21, lines 20 through 26. An issue of new matter is not raised by this amendment and entry thereof is respectfully requested.

In view of the remarks which follow, reconsideration and withdrawal of the rejection is respectfully requested.

### 35 U.S.C. § 102

Claims 23, 24, 28, 30-37 and 40-43 stand rejected under 35 U.S.C. § 102 as allegedly anticipated by Silvestrini, U.S. Patent No. 5,300,118 (the '118 Patent). The Office noted that Figures 11A and 11A; column 2, lines 13-15; column 3, lines 60-68; column 6, lines 47-50 and 58-60; and column 10, lines 14-27 and 38-42, as being of particular relevance

Applicant respectfully traverses and directs the Examiner to page 20, line 30 to page 22, line 8 of the specification which describes the embodiments shown in Figures 16A and 16B. A comparison of Figures 16A and 16B to Figures 11A and 11B of the '118 Patent clearly shows that the ring of the '118 Patent does not anticipate the claims of the subject application. The ring of the '118 Patent is not disclosed to contain a plurality of adjoining sections wherein the cross-sectional areas of the adjoining sections change substantially stepwise from one section to an adjoining section. The '118 Patent shows a ring having adjoining sections which differ in cross-section from each other, but not in a stepwise fashion. Indeed, figures 11A and 11B of the '118 Patent show a system comprising two notched inserts of differing heights which are later aligned to the desired height, after implantation in order to achieve the desired thickness. After insertion and alignment, the 2 rings are locked in place by any appropriate means such as the use of sutures, adhesives, pins, etc. (See col. 10, lines 14 to 26 of the '118 Patent). In contrast to the present invention, the sections of this invention are not notched and locked into place after implantation. Rather it is a single ring or segment system wherein the sections adjoining the section which has the proper corrective diameter are removed after implantation into the eye.

(See page 21, lines 20 to 26 of the specification). Reconsideration and withdrawal of this rejection is respectfully requested.

### III. CONCLUSION

However, if the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-2518**, referencing billing number **2023915-7004204001**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account. Should a telephone interview advance prosecution of the subject application, the Examiner is invited to contact the undersigned at (650) 849-4950.

Respectfully submitted,

Date: September 10, 2003

By:   
Antoinette F. Konski  
Reg. No. 34,202

Bingham McCutchen LLP  
Three Embarcadero Center, Suite 1800  
San Francisco, CA 94111  
Telephone: (650) 849-4950  
Facsimile: (650) 849-4800